

ASSEMBLY BILL

No. 477

Introduced by Assembly Member Baca

February 16, 2005

An act to amend Sections 22775 and 22920 of the Government Code, and to amend Section 12302.25 of the Welfare and Institutions Code, relating to public social services, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 477, as introduced, Baca. In-home supportive services providers: health benefits.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which, either through employment by the recipient or by or through contract by the county, qualified, aged, blind, and disabled persons receive services enabling them to remain in their own homes. Counties are responsible for the administration of the IHSS program.

Existing law authorizes specified public agencies to elect, subject to certain conditions, to provide coverage for the agency's employees, as defined, in health benefit plans under the Public Employees' Medical and Hospital Care Act and requires those agencies to make specified contributions to the Public Employees' Contingency Reserve Fund, a continuously appropriated special fund, to cover the administrative costs incurred by the Board of Administration of the Public Employees' Retirement System in providing that coverage.

This bill would authorize specified entities that meet the in-home supportive services employer of record requirements of these provisions and certain other requirements, subject to negotiations with an employee representative, to purchase health insurance coverage for

their employees through the Public Employees' Medical and Hospital Care Act, if the coverage that is negotiated is eligible for maximum federal financial participation. The bill would provide that the coverage negotiated pursuant to this provision shall not be eligible for state financial participation beyond the funds established for the purposes of providing health insurance coverage to in-home supportive services providers as set forth in the annual Budget Act.

This bill would make an appropriation by increasing the amount of contributions to the Public Employees' Contingency Reserve Fund.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22775 of the Government Code is
2 amended to read:

3 22775. (a) "Family member" means any of the following:

4 ~~(a)–~~

5 (1) An employee's or annuitant's spouse and any unmarried
6 child, including an adopted child, a stepchild, or recognized
7 natural child. The board shall, by regulation, prescribe age limits
8 and other conditions and limitations pertaining to unmarried
9 children.

10 ~~(b)–~~

11 (2) Notwithstanding any other provision of law, a domestic
12 partner of an employee or annuitant shall be considered a family
13 member for purposes of Section 22810, subdivision (a) of
14 Section 22814, Sections 22822, 22830, 22837, 22841, 22842,
15 22843, 22844, subdivision (a) of Section 22846, and Sections
16 22847, 22863, 22871, 22879, 22890, 22911, and 22937.

17 (b) *A recipient of in-home supportive services may not enroll*
18 *as a family member of an employee of a contracting agency*
19 *described in subdivision (d) of Section 22920.*

20 SEC. 2. Section 22920 of the Government Code is amended
21 to read:

22 22920. The following entities are eligible to become subject
23 to this part:

24 (a) A contracting agency, as defined in Section 20022, a
25 county or special district subject to the County Employees

1 Retirement Law of 1937 (Chapter 3 (commencing with Section
2 31450) of Part 3 of Division 4 of Title 3), and a school employer.

3 (b) A public body or agency of or within the state that is not
4 subject to Part 3 (commencing with Section 20000) of the
5 Government Code or the County Employees Retirement Law of
6 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of
7 Division 4 of Title 3), and that provides a retirement system for
8 its employees funded wholly or in part by public funds.

9 (c) The protection and advocacy agency described in
10 subdivision (h) of Section 4900 of the Welfare and Institutions
11 Code, if the agency obtains a written advisory opinion from the
12 United States Department of Labor stating that the organization
13 is an agency or instrumentality of the state or a political
14 subdivision thereof within the meaning of Chapter 18
15 (commencing with Section 1001) of Title 29 of the United States
16 Code.

17 (d) *The employer of record described in subdivision (h) of*
18 *Section 12302.25 of the Welfare and Institutions Code, if the*
19 *employer of record obtains a written advisory opinion from the*
20 *United States Department of Labor stating that the employer is*
21 *an agency or instrumentality of the state or a political*
22 *subdivision thereof within the meaning of Chapter 18*
23 *(commencing with Section 1001) of Title 29 of the United States*
24 *Code.*

25 SEC. 3. Section 12302.25 of the Welfare and Institutions
26 Code is amended to read:

27 12302.25. (a) On or before January 1, 2003, each county
28 shall act as, or establish, an employer for in-home supportive
29 service providers under Section 12302.2 for the purposes of
30 Chapter 10 (commencing with Section 3500) of Division 4 of
31 Title 1 of the Government Code and other applicable state or
32 federal laws. Each county may utilize a public authority or
33 nonprofit consortium as authorized under Section 12301.6, the
34 contract mode as authorized under Sections 12302 and 12302.1,
35 county administration of the individual provider mode as
36 authorized under Sections 12302 and 12302.2 for purposes of
37 acting as, or providing, an employer under Chapter 10
38 (commencing with Section 3500) of Division 4 of Title 1 of the
39 Government Code, county civil service personnel as authorized
40 under Section 12302, or mixed modes of service authorized

1 pursuant to this article and may establish regional agreements in
2 establishing an employer for purposes of this subdivision for
3 providers of in-home supportive services. Within 30 days of the
4 effective date of this section, the department shall develop a
5 timetable for implementation of this subdivision to ensure
6 orderly compliance by counties. Recipients of in-home
7 supportive services shall retain the right to choose the individuals
8 that provide their care and to recruit, select, train, reject, or
9 change any provider under the contract mode or to hire, fire,
10 train, and supervise any provider under any other mode of
11 service. Upon request of a recipient, and in addition to a county's
12 selected method of establishing an employer for in-home
13 supportive service providers pursuant to this subdivision,
14 counties with an IHSS caseload of more than 500 shall be
15 required to offer an individual provider employer option.

16 (b) Nothing in this section shall prohibit any negotiations or
17 agreement regarding collective bargaining or any wage and
18 benefit enhancements.

19 (c) Nothing in this section shall be construed to affect the
20 state's responsibility with respect to the state payroll system,
21 unemployment insurance, or workers' compensation and other
22 provisions of Section 12302.2 for providers of in-home
23 supportive services.

24 (d) Prior to implementing subdivision (a), a county shall
25 establish an advisory committee as required by Section 12301.3
26 and solicit recommendations from the advisory committee on the
27 preferred mode or modes of service to be utilized in the county
28 for in-home supportive services.

29 (e) Each county shall take into account the advice and
30 recommendations of the in-home supportive services advisory
31 committee, as established pursuant to Section 12301.3, prior to
32 making policy and funding decisions about the program on an
33 ongoing basis.

34 (f) In implementing and administering this section, no county,
35 public authority, nonprofit consortium, contractor, or a
36 combination thereof, that delivers in-home supportive services
37 shall reduce the hours of service for any recipient below the
38 amount determined to be necessary under the uniform assessment
39 guidelines established by the department.

(g) Any agreement between a county and an entity acting as an employer under subdivision (a) shall include a provision that requires that funds appropriated by the state for wage increases for in-home supportive services providers be used exclusively for that purpose. Counties or the state may undertake audits of the entities acting as employers under the terms of subdivision (a) to verify compliance with this subdivision.

(h) *An entity that meets the in-home supportive services employer of record requirements of this section may, subject to negotiations with an employee representative, purchase health insurance coverage for its employees through the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code), if the entity is an agency or instrumentality of the state or a political subdivision thereof within the meaning of Chapter 18 (commencing with Section 1001) of Title 29 of the United States Code and if the coverage that is negotiated is eligible for maximum federal financial participation. The coverage negotiated pursuant to this subdivision shall not be eligible for state financial participation beyond the funds established for the purposes of providing health insurance coverage to in-home supportive services providers as set forth in the annual Budget Act.*

(i) On or before January 15, 2003, each county shall provide the department with documentation that demonstrates compliance with the January 1, 2003, deadline specified in subdivision (a). The documentation shall include, but is not limited to, any of the following:

(1) The public authority ordinance and employee relations procedures.

(2) The invitations to bid and requests for proposal for contract services for the contract mode.

(3) An invitation to bid and request for proposal for the operation of a nonprofit consortium.

(4) A county board of supervisors' resolution resolving that the county has chosen to act as the employer required by subdivision (a) either by utilizing county employees, as authorized by Section 12302, to provide in-home supportive services or through county administration of individual providers.

(5) Any combination of the documentation required under paragraphs (1) to (4), inclusive, that reflects the decision of a county to provide mixed modes of service as authorized under subdivision (a).

~~(i)~~

(j) Any county that is unable to provide the documentation required by subdivision ~~(h)~~ (i) by January 15, 2003, may provide, on or before that date, a written notice to the department that does all of the following:

(1) Explains the county's failure to provide the required documentation.

(2) Describes the county's plan for coming into compliance with the requirements of this section.

(3) Includes a timetable for the county to come into compliance with this section, but in no case shall the timetable extend beyond March 31, 2003.

~~(j)~~

(k) Any county that fails to provide the documentation required by subdivision ~~(h)~~ (i) and also fails to provide the written notice as allowed under subdivision ~~(i)~~ (j), shall be deemed by operation of law to be the employer of IHSS individual providers for purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code as of January 15, 2003.

~~(k)~~

(l) Any county that provides a written notice as allowed under subdivision ~~(i)~~ (j), but fails to provide the documentation required under subdivision ~~(h)~~ (i) by March 31, 2003, shall be deemed by operation of law to be the employer of IHSS individual providers for purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code as of April 1, 2003.

~~(l)~~

(m) Any county deemed by operation of law, pursuant to subdivision ~~(j)~~ (k) or ~~(k)~~ (l), to be the employer of IHSS individual providers for purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code shall continue to act in that capacity until the county notifies the department that it has established another employer as permitted by this section, and has provided the department

1 with the documentation required under subdivision—~~(h)~~ *(i)*
2 demonstrating the change.
3 ~~(m)~~—
4 *(n)* Section 10605 may be applied in each county that has not
5 complied with this section by January 1, 2003.

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